

INITIAL STATEMENT OF REASONS

Title 13. Article 2.1. Sections 25.06 through 26.22

Employer Testing Program

The Department of Motor Vehicles (the department) proposes to adopt Sections 25.06, 25.07, 25.08, 25.09, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, and 25.22 in Chapter 1, Division 1, Article 2.1 of Title 13, California Code of Regulations, governing the use of third party testers to conduct the commercial behind the wheel driving test. These regulations were initially adopted in 1987, renumbered and amended in 1993, then repealed as a change without regulatory effect in 1996, in response to Executive Order No. W-131-96 regarding regulatory reform, as the statutes originally cited as authority and reference for these regulations had been repealed.

The department is authorized in Part 383 of Title 49 of the Code of Federal Regulations (CFR) and Vehicle Code Section 15250 to use third party testers to conduct the commercial behind the wheel driving test, under specified conditions. Included among these conditions are the requirements that the tests administered by the third party are the same as those that would otherwise be given by the department, and the third party examiners meet the same qualification and training standards as State examiners.

The department currently allows only employers who are enrolled in the department's Employer Testing Program to conduct the commercial behind the wheel driving tests on its behalf. The employers must certify that their drivers have been given the driving test and successfully completed all the test components.

§25.06 Authority and Definitions

Vehicle Code Section 12804.9 specifies testing requirements for the various classes of driver licenses issue by the department. Section 15250 of the Vehicle Code prohibits the department from issuing a commercial driver license until an applicant has passed testing which complies with the minimum standards established in the federal Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) and Part 383 of Title 49 of the Code of Federal Regulations, and has satisfied all other requirements. Subparagraph (c) of Section 15250 and 49 CFR Part 383, authorize the department to allow third party testers to administer the driving test portion of the commercial driver license exam under specified conditions.

The department administers the Employer Testing Program, which allows employers that meet the conditions of Section 15250 and 49 CFR Part 383 to conduct commercial behind the wheel driving tests on behalf of the department. The department proposes to adopt Section 25.06 to define terms used in the Employer Testing Program.

Subparagraph (a) defines a "certified driver" as a driver that has been issued a Certificate of Driving Skill (DL170ETP, Rev. 9/02) for purposes of waiving the department administered driving test portion of the commercial driver test. This definition is necessary for consistent use of the term throughout the regulations.

Subparagraph (b) defines "driving test." This definition is necessary because the driving test is often thought of as the behind the wheel portion of the test. However, the commercial driving test

includes three components – the pre-trip inspection, skills test, and the road test. Therefore, references in this regulation to driving test are intended to include all three portions of testing.

Subparagraph (c) defines the term “employee” as used in this program. The employee/employer relationship is essential to the program because the program is intended to allow employers enrolled in the program to give examinations to only their own employee drivers, and to ensure the program participants have a vested interest in their responsibilities.

Subparagraph (d) defines “Employer Testing Program (ETP)” as a departmental program that authorizes third party testers to conduct the behind-the-wheel commercial driving tests. The Vehicle Code uses the term third-party tester. The department determined that third party testing would be conducted by employers only and, therefore, use the term employer testing to identify the program.

Subparagraph (e) specifies that an “employer” is a person, company, partnership, government or other qualified entity enrolled in the ETP.

Subparagraph (f) defines a “governmental employer.” Vehicle Code Section 15250 (c)(2)(H) authorizes the department to charge a fee sufficient to cover the costs of administering the program that is charged to all non-governmental employers. Government employers remain exempt from fees.

Subparagraph (g) defines “route approval” as the review and approval by the department of the proposed driving test route established by an employer to ensure it meets the driving test route requirements for the ETP.

Subparagraph (h) defines the “testing location.” Because the business address is not always the same as the place the driving test originates, it is important to define testing location as the origination point for the driving test.

Subparagraph (i) defines a “third party tester” as an employer with a place of business in California that is authorized by the department to conduct commercial driving tests on behalf of the department.

§25.07 Employer Prerequisites

The Employer Testing Program is designed to allow employers to test their employees to drive the employer’s vehicles. Therefore, it is essential that the employer be engaged in an activity that requires its drivers to possess a Class A or B license. This is established in subparagraph (a).

Subparagraph (b) requires that employers have a terminal located in California where they conduct business, conduct driving tests, and maintain records. Rental of a desk or desk space in a structure that is not owned, leased, or rented by the Employer does not constitute a valid place of business for purposes of Employer Testing Program qualifications. This requirement is necessary to ensure the employer is in compliance with other California statutes and regulations, as well as to provide a location in the state where audits of the program can be performed.

§25.08 Employer Testing Program Enrollment

In order to establish and maintain an accurate database of Employer Testing Program participants, the department requires a variety of documentation from the employer. Information from all documents will be entered into a database that will be used to provide accurate information regarding employers, their locations, and additional information that will be described in more detail within this Initial Statement of Reasons.

Subparagraphs (a) and (a) (1) require the employer to submit a completed Application for Employer Number (DL520ETP, Rev. 8/02). This information will be used to create initial entries into the database and to create an employer number. The information requested on the application is necessary to create a record that includes the pertinent information without requiring excessive data entry time by using several different documents.

Subparagraph (a) (1) (A) requires the employer to indicate whether the document is the original (initial) application for an employer number. This is necessary because the form (DL520ETP, Rev. 8/02) is also used for renewal applications.

Subparagraph (a) (1) (B) requires the name of the employer. This is necessary to establish the employer's record with the department.

Subparagraph (a) (1) (C) requires the employer to provide the Employer Number for any previous enrollment in the program. A prior Employer Number may have been suspended, revoked or allowed to expire. This information allows the department to quickly retrieve any prior information from the database.

Subparagraph (a) (1) (D) requires the mailing address to be entered on the Application form. This is required because many businesses use post office boxes for their mailing address rather than the street address or physical location of the business.

Subparagraph (a) (1) (E) requires the employer's telephone number, including area code so that the department can contact the employer when necessary for reasons such as to clarify information received, and to schedule an audit.

Subparagraph (a) (1) (F) requires the business street address. This is essential in order for audit visits to be scheduled and so that packages shipped by carriers such as UPS or Federal Express can be delivered.

Subparagraph (a) (1) (G) requires the employer to disclose the number of commercial drivers employed by the employer, to verify the employer's actual need to become a third-party tester.

Subparagraph (a) (1) (H) requires the employer to provide information regarding the number of commercial vehicles in its fleet. This information gives the department an indication of what to look for in the terms of certification volumes, and is needed for audit purposes.

Subparagraph (a) (1) (I) requires the employer to identify the nature of business in which the employer is engaged, including the use of vehicles. This is necessary because to qualify to become a third-party tester, the employer's business must be of a type that requires a portion of its workforce to obtain a commercial driver license.

Subparagraph (a) (1) (J) requires the employer to indicate the class of license for which the employer is requesting authority to perform driving tests. This is necessary to determine the type of driving test route that will be required, as well as the class of driver license the examiner will require. The requested authority must be consistent with the employer's identified business need.

Subparagraph (a) (1) (K) requires the employer to disclose whether the employer's drivers transport hazardous materials. The Federal Motor Carrier Safety Administration is planning to issue an Interim Final Rule to implement Section 1012 of the USA Patriot Act. This Act will prohibit states from issuing hazardous materials endorsements until a background check of the driver is completed. Therefore, employers will need to comply with the new federal rules when they become effective.

Subparagraph (a) (1) (L) requires the street address and telephone number for the origination point of the primary and alternate driving test route to be entered on the application form. This is necessary for the department to approve the driving test routes prior to issuance of an employer number and/or usage of the route for driving tests.

Subparagraph (a) (1) (M) requires identification of any route approval numbers that have already been approved by the department, if the employer is using an existing department approved route. This is necessary so the department can verify that the routes are still in compliance with both state and federal requirements.

Subparagraph (a) (1) (N) requires the facility name, street address and telephone number where the employer's training, testing and employment records are kept, if the records are maintained at a location separate from the primary place of business. This information will allow the department to schedule audits more efficiently.

Subparagraph (a) (1) (O) requires the identity of the employer's Authorized Representative(s) by name, driver license number, telephone number, address, and whether the individual is being added or deleted as an Authorized Representative, and the date of the action. Each employer must designate specific individuals who will be authorized to certify compliance with departmental requirements. This information must be readily accessible to the department, so that the department can verify the person signing the Certificates of Driving Skill against the information on the database, and quickly check for fraudulent activity.

Subparagraph (a) (1) (P) requires the Administrator's driver license number. Each employer will be required to designate one individual as the employer's administrator. The administrator will be the department's primary point of contact. The administrator's driver license number will allow the department to verify the correct identity of the administrator.

Subparagraph (a) (1) (Q) requires the Administrator's printed name and title. It is essential that the department be able to verify the administrator's identity. Also, because some individuals' handwriting is illegible, it is necessary to have the name printed on the form so the department will have an accurate spelling.

Subparagraph (a) (1) (R) requires the Administrator's signature under penalty of perjury under the laws of the State of California certifying that the contents of the Application are true and correct, and that the employer will abide by provisions of the Vehicle Code and the California Code of Regulations governing the Employer Testing Program. The administrator's signature is applied to the various documents under penalty of perjury as a method to prevent potential fraud.

Subparagraph (a) (1) (S) requires the Administrator's office street address. Often corporations have several branch offices throughout the state. Because the administrator is the primary point of contact for the department, it is necessary to know at which office site the Administrator is located.

Subparagraph (a) (1) (T) requires an indication of whether the employer is enrolled in the department's Employer Pull Notice program. The Pull Notice program allows employers to be notified when driving violations are recorded on their employees' driving records. One benefit of this program is that it allows the employer to take corrective actions with their drivers prior to the department taking punitive actions against the driver (i.e., suspensions or revocations). Since in the Employer Testing Program, the employer is responsible for the training and testing of their drivers, it is important to identify problems early. Therefore, the department is requiring the employer be enrolled in the Employer Pull Notice program.

Subparagraph (a) (2) requires documentation of primary and alternate driving test routes to be provided on specified forms. Each driving test must include specific maneuvers in order to comply with state and federal requirements. In order for an employer to be approved to conduct the driving tests, the department must verify the routes that are intended to be used. To simplify the process, the department has developed forms that provide uniformity of information provided so that the driving test routes can be approved and audited easily. The DL814ETP, Rev. 10/01, requests a description of the route, as well as the directions to be used. The DL807ETP, Rev. 7/02, is a checklist for both the employer and the department, to make certain that all required maneuvers have been included in the driving route. A route map is also required as part of the documentation.

Subparagraph (a) (3) requires Non-Governmental employers to pay a non-refundable application fee for a period of three years at \$15 per year (for a total of \$45). Vehicle Code Section 15250 (c)(2)(H) authorizes the department to charge a fee that is sufficient to cover the costs of administering the program. This program has charged \$15 per year since its inception in 1961. Until a complete cost-analysis can be completed that will justify an increase in fees that would not be prohibitive to the program participants, the fees shall remain at \$15 per year for non-governmental employers. Government employers remain exempt from fees. This allows the employer to send one check every three years, and reduces the volume of individual financial transactions processed by the department.

Subparagraph (b) provides that the department will return any incomplete Application to the employer within 15 days of receipt of the Application by the department. When the department receives the original application, it will be reviewed for completeness. This review includes processing the fees that are attached to the application, recording receipt of the documents and assigning the application for processing. Depending upon the workload of the section that receives these applications, it can take as little as five days to process the application. However, in the event there is a backlog in the workload, the department is projecting that it will take no more than 15 days to return the Application (DL520ETP, Rev. 8/02) to the employer in the event it is incomplete. The Application is considered incomplete if any of the information identified above is not included. Because the Application is signed under penalty of perjury, department will not make any changes to the Application.

Subparagraph (c) requires all amendments to the Application to be in writing and signed by the employer's Administrator for the protection of the employer and the department with regard to this program. Requiring all amendments to be in writing and signed by the employer's Administrator is necessary to assure that each party understands any changes made in the Application contents.

Subparagraph (d) permits the department to void an application that has not been completed within 12 months. Twelve months is adequate time for an applicant to complete an application. Within a 12-month period, various changes could occur within the employer's organization, such as personnel transitions or other business activity relating to the employer's qualifications to participate in the program. Therefore, in order to ensure the department has accurate information, the 12-month time frame will be established. The department, however, would have begun the processing of the Application, which includes entering information into a database, processing the payment received, and making preliminary assignments, thereby using the processing fee. The information in the database may be purged after 12 months if the application process has not been completed. Therefore, the department requires a new application fee.

Subparagraph (e) states that the department will assign a unique identifying number to each employer. This is for the purpose of quickly identifying the employers enrolled in the Employer Testing Program. However, the department is providing an exception to the assignment of individual Employer Numbers in the case of firefighting organizations. This is due to the fact that there are some remote firefighting districts and volunteer fire departments that work together on a continuing basis. These districts often use the same driving test routes, and the same examiners, for participation in this program. As indicated the exception would apply only if the firefighters are using the same Driving Test route(s).

Subparagraph (f) expresses the department's commitment to notify the employer of its assigned Employer Number and approved driving test routes within 30 days of receipt of a complete application package, in accordance with the Permit Reform Act of 1981 (Government Code sections 15374 through 15378). During the 30-day period, the department may use the driving test route information for an on-site review of the documented driving test route to ensure it is in compliance with departmental and federal standards. If the route is not approved, depending upon the severity of the deficiency, the department may work with the employer to correct the deficiency during the review, or the department may forward a letter describing the deficiency to the employer and await notification of correction. Completion of this process can take up to 23 working days before the Employer Testing Program assigns route approval numbers and completes the process.

Subparagraph (g) provides for a staggered renewal cycle upon adoption of these regulations, so that all employers currently enrolled in the ETP can be brought into compliance. A staggered renewal cycle will keep the department from being placed into an immediate backlog situation. After the first renewal of the employer number through the staggered cycle, the employer will be required to renew every three years.

Subparagraph (h) identifies the department's commitment to send the employer a renewal packet no later than 90 days prior to the expiration of the employer number, so there is no break in the employer's authority to conduct driving tests. This will allow time for the employer to complete its application and submit it to the department for processing 45 days prior to expiration.

Subparagraph's (h) (1), (2) and (3) state the contents of the employer's renewal packet. A new application will be provided for completion, ensuring that any changes which occurred in the prior three-year period are reflected on the form. The department will also send the employer a list of drivers that have been certified under the employer's Employer Number to allow the employer an opportunity to ensure that no fraudulent activity has taken place. The last item in the renewal packet is a request for payment of an application fee of \$45 (\$15 for each year for a period of three years) from non-government employers.

Subparagraph (i) and subparagraphs (i) (1), (2) and (3) require the employer to submit a completed Application package for renewal no later than 45 days prior to expiration of the Employer Number, to renew its Employer Number. Completion of a new application will ensure that department is made aware of any changes that occurred in the prior three-year period. Verification of the list of drivers provided by the department will give the employer the opportunity to verify the drivers who were issued a Certificate of Driving Skill (DL170ETP) and ensure that fraudulent activity is not taking place. Non-Governmental employers are required to include payment of a \$45 application fee with submission of the application and verified list.

Subparagraph (j) requires an existing employer to submit documentation of its primary and alternate driving test routes on the Commercial Driving Performance Evaluation Route and

Directions form (DL814ETP, Rev. 10/01), with its first renewal application. This is necessary because the program is currently operating, and the department has not previously assigned an approval number to the Driving Test Routes.

Subparagraph (k) provides that the department will return any incomplete renewal Application to the employer within 15 days of the department's receipt of the Application. When the department has received the renewal application, it must be reviewed for completeness. This review includes processing the fees that are attached to the application, recording receipt of the documents and assigning the application for processing. Because this is a renewal application, much of the information is already present in the database. Therefore, the department would be verifying the presence of the above listed documents and fees. The department will also verify that the employer is not suspended or revoked under these regulations. The department is projecting that it will take no more than 15 days to return the Application (DL520ETP, Rev. 8/02) to the employer in the event it is incomplete.

Subparagraph (l) expresses the department's commitment to notify the employer of its renewal eligibility and department route approval numbers within 30 days of receipt of a completed Application (DL520ETP, Rev. 8/02), in accordance with the Permit Reform Act of 1981 (Government Code sections 15374 through 15378). The department will verify that the required fees are included with the package and review the route to ensure that no changes have been made.

Subparagraph (m) permits the department to extend the expiration date of the Employer Number, at its discretion, if all application requirements have been met. In the event that the department is precluded from meeting its established deadlines for the approval process, and the employer has submitted all required documentation in a timely manner as required by these regulations, the department would extend the employer's expiration date so that the Employer Number is not cancelled or expired.

Subparagraph (n) requires an employer to submit an original Application with the appropriate fees when the Employer Number is expired, cancelled, suspended or revoked for more than 12 months. As stated previously, the department may purge files on the database after a period of 12 months if the application is incomplete. This time frame also applies when an Employer Number has expired, or been cancelled, revoked, or suspended for more than 12 months.

§25.09 Application Changes

Subparagraph (a) requires the employer to report specified changes in writing to the department within 10 days of occurrence on company letterhead or on a completed and signed Application form. In order to maintain the integrity of the Employer Testing Program, the department must be kept informed in a timely manner of changes that affect the approval of Certificates of Driving Skill (DL170ETP, Rev. 9/02), or the ability of the department to contact the employer.

Subparagraph (a) (1) requires the employer to report any change of address.

Subparagraph (a) (2) requires the employer to report any change adding or deleting the employer's authorized representatives.

Subparagraph (a) (3) requires the employer to report any change in the class of driver license for which driver testing authority is requested.

In subparagraph (b), a change of Administrator or change of employer name must be reported to the department on an Application (DL520ETP, Rev. 8/02) and submitted within 10 days of the occurrence. The requirement that a change of Administrator be reported on an Application form is

necessary because this person signs the application and is the employer's liaison with the department. It is necessary to report the change of employer name on the Application form because the department needs to know what the name change entails and whether it affects the employer's qualifications for participation in the Employer Testing Program.

§25.10 Driving Test Routes

Subparagraph (a) requires that upon adoption of these regulations, every employer must provide specified documentation of its primary and alternate driving test routes, upon application for a new or renewed Employer Number. This documentation must be provided on the Commercial Driving Performance Evaluation Route and Directions form (DL814ETP, Rev. 10/01), Commercial DPE Maneuver Checklist (DL807ETP Rev. 7/02) and route map. As stated previously, this is an ongoing program, and there are employers currently participating in the ETP. Although the department has approved driving test routes, this approval takes place either before and after usage. However, the requirement to use a specific form has not been uniformly enforced. This regulation will permit the department to collect information concerning driving test routes in a consistent manner, and will provide the department with a uniform requirement. After each document has been reviewed and approved by the department, the route will be assigned a department route approval number.

Subparagraph (b) requires the department's route approval number for the employer's driving test route to be entered on the Driving Test Score Sheets and on the Certificate of Driving Skill (DL170ETP, Rev 9/02). This number assists the department in validating the Certificates of Driving Skill and the Driving Test Score Sheets and provides the department with a reference tool to verify the maneuvers scored on the score sheets with the maneuvers included on the department-approved routes.

Subparagraph (c) permits the employer to request in writing a waiver of individual driving test maneuvers, on form DL807ETP, Rev. 7/02. Federal regulations require certain maneuvers to be tested as part of commercial driving tests. However, there are instances where specific elements may be omitted from the driving test due to factors such as geographic features of certain regions in the state, ongoing construction, and highway development. If there are valid circumstances in which elements of the driving test route may be waived, the employer must provide this information to the department prior to the route being approved.

Subparagraph (d) requires any changes in the route, especially those that may remove a requirement of the driving test, to be reported to the department on the appropriate forms and approved by the department prior to use of the route. This is necessary because there are maneuvers and elements that must be included in driving test routes. Additionally, the department is requesting the route map so that the department can review and approve the change prior to its use.

Subparagraph (e) requires the employer to report to the department corrections to a route found to be deficient on the proper forms and on the route map. The department must approve these changes before the route can be used. During inspection of the driving test route, either the Federal Motor Carrier Safety Administration or the department may discover deficiencies.

§25.11 Quality Assurance Program

Subparagraph (a) requires the employer to establish and maintain a quality assurance program to ensure the program is being operated in a manner that maintains the integrity of the Employer Testing Program.

Subparagraph (a) (1) provides that the quality assurance program ensure that all provisions and terms of these regulations are honored.

Subparagraph (a) (2) requires the employer to establish adequate internal controls, and that these controls include an appropriate separation of duties of the program participants as required by these regulations.

Subparagraph (a) (3) requires the employer to permit appropriate representatives to conduct random examinations, inspections and audits without prior notice.

Subparagraph (a) (4) duplicates the provisions of Vehicle Code Section 15250 (c) (2) (B). It is necessary to duplicate these statutory provisions in the proposed regulations in order to maintain all of the employer's requirements in one place, for ease of use.

Subparagraph (a) (5) requires the employer to permit the department to randomly retest without cause certified drivers issued a Certificate of Driving Skill (DL170ETP, Rev. 9/02), to ensure the drivers are receiving adequate testing. Title 49, Part 383, Section 383.75 (a) (iv) requires that at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by a third party to compare pass/fail results. The department has elected to test a sample of drivers who were examined by a third party.

§25.12 Driver Training Program

Subparagraph (a) requires the employer to have an established driver-training program, as this will benefit the employer. The training program provides the opportunity for the employer to evaluate whether or not an employee is prepared to take the driving test, and allows the employer to also determine a driver's weaknesses.

Subparagraph (b) requires the employer to ensure that the driver has been trained in specific areas that are covered in the driving test. Subparagraphs (b) (1) through (b) (7) list the critical elements in Title 49, Part 383, Section 383.111 and 383.113 that are required knowledge and skills to possess a commercial driver license.

§25.13 Driving Test Program

Subparagraph (a) requires the employer to establish a driving test program that includes utilization of the Commercial Driver License Driving Performance Evaluation criteria. These criteria are the standard by which all commercial driving tests given by the department are measured. In accordance with federal and state mandate, the tests given pursuant to the Employer Testing Program must be equivalent to the tests performed by the department.

Subparagraph (b) requires all driving tests to be conducted by an Examiner that has been authorized by the department to conduct driving tests for the Employer Testing Program. This is necessary to ensure that the Examiner conducting the driving test meets the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests. The department will provide Examiner training. This training will provide the Examiners with the information necessary to properly conduct and score a driving test, complete

necessary forms, and other required information. The authority to conduct the driving test would be evident in the form of completion certificate issued by the department's training facilitator.

Subparagraph (c) prohibits the employer from deviating from the approved route when conducting driving tests. As mentioned previously, there are specific maneuvers that must be completed during a commercial driving test. The routes that have been approved by the department contain those maneuvers, unless the previously noted waivers have been approved.

Subparagraph (d) requires that in the event the employer uses a commercial vehicle that has special equipment ID plates as identified in Vehicle Code sections 5011, 5015, 5016, and 36115, a trip permit must be obtained to operate this vehicle on the public highways. Special equipment ID plates are issued to special construction equipment, special mobile equipment, cemetery equipment, trailers, semi-trailers, every logging vehicle, and most implements of husbandry.

§25.14 Certificate of Driving Skill (DL170ETP)

Subparagraph (a) requires the signature of both the Authorized Representative and the Examiner on the Certificate of Driving Skill (DL170ETP, Rev. 9/02). The department shall issue to each eligible employer a supply of the Certificate of Driving Skill (DL170ETP Rev. 9/02) forms for the purpose of certifying to the department successful completion of a driving skill test by an employee. The completed Certificate of Driving Skill (DL170ETP Rev. 9/02) will serve as authority for the department to waive the driving skill test for the purpose of issuing a commercial driver license to the individual identified on the document. Because this document represents an assertion of fact on the part of the employer, it must be signed under the penalty of perjury under the laws of the State of California.

Subparagraph (b) authorizes the department to waive the driving test for a Class A or B driver license application when the driver presents a valid Certificate of Driving Skill (DL170ETP, Rev. 9/02) issued by an authorized employer, and the driver has met the other examination requirements for the license in Vehicle Code section 12804.9. The department will verify that an authorized employer issued the Certificate of Driving Skill (DL170ETP, Rev. 9/02) under the provisions of the Employer Testing Program. This verification may include ensuring the Employer Number is active. In order for the Certificate of Driving Skill (DL170ETP, Rev. 9/02) to be valid, the driver must first qualify for a Class C driver license. Additionally, the driver must have received a learner's permit for the class of vehicle identified on the Certificate. A permit is issued when the driver has passed the written knowledge test given by the department. The Certificate of Driving Skill represents to the department that the driver has demonstrated the ability to exercise ordinary and reasonable control in operating a commercial motor vehicle by driving it under the supervision of an examining officer. (Vehicle Code section 12804.9 also requires a report of medical examination given not more than 2 years prior to the date of the application by a health care profession and a test of the hearing and eyesight of the applicant, and of other matters that may be necessary to determine the applicant's mental and physical fitness to operate a motor vehicle upon the highways.)

Subparagraphs (c) (1) through (c) (20) identify items that must be completed on the Certificate of Driving Skill (DL170ETP, Rev. 9/02) in order for it to be accepted by the department.

Subparagraphs (c) (1) through (c) (5) require information about the driver. The personal information collected on the DL-170 from the drivers is used to identify the drivers, verify employment status, or locate driver files. Several drivers may have the same name; fathers and sons may work at the same company, etc. Some employers keep the data by name and may use

the driver license number to help find the correct driver in the audit sample. Some companies file driver records by the location where the driver lives and use the driver's address to locate them. Also, the driver's address helps to alert the department's Employer Testing Program section or audit section to possible fraud. In addition, in cases where the driver has left the employ of the employer or driver's license can't be read, the driver license number helps the department locate the driver in the database(s). The driver's telephone number is used to contact the driver when additional information is needed by the department.

It should be noted that the personal information contained on the DL-170 is only viewed by the driver, his/her employer, and a DMV representative. The driver and his/her employer should already have the information, and DMV employees are not allowed to use the information for purposes other than DMV official business.

Subparagraph (c) (6) requires the date the driver was employed by the employer. This is necessary because these regulations require the driver to be an employee of the employer. Subparagraph (c) (7) requires the driver's signature to certify that the information pertaining to him or her is accurate and true.

Subparagraphs (c) (8) through (c) (12) require information regarding the driving test that was conducted as well as the vehicle used in the testing. The vehicle type and equipment features are used to determine the class of license that will be issued to the driver. The route approval number is used to ensure that the Examiner used a department-approved route for the test. The vehicle license plate number is an additional method of verifying the class of vehicle used in the testing.

Subparagraphs (c) (13) through (c) (15) require information regarding the Examiner. Later in this statement of reasons the requirements for the Examiner will be discussed, which include possessing a commercial driver license of a class equivalent to the class of vehicle for which he or she is conducting the examination. The commercial driver license number is necessary to verify that the Examiner was eligible to conduct the examination identified on the Certificate of Driving Skill. The Examiner's signature is required to certify that the information regarding the testing is true and correct, that the test was actually conducted, and that the driver performed the necessary skills at a level that meets the requirements established by the department. Again, the Examiner must sign the form under penalty of perjury.

Subparagraphs (c) (16) through (c) (19) require information about the employer's Authorized Representative. The employer is required to identify individuals who have the knowledge and authority to certify the employment status of the driver, and to validate the training and testing identified on the Certificate of Driving Skill.

Subparagraphs (c) (20) through (22) require the name, address and Employer Number of the employer. This is necessary to verify the eligibility of Employer.

§25.15 Record-Keeping Program

Each document listed in subparagraphs (a) (1) through (a) (11) provide verification of compliance with these regulations, Vehicle Code requirements, and/or compliance with Title 49, Part 383 of the Code of Federal Regulations. This is an audited program. It is, therefore, necessary to identify the records that will be reviewed in a department audit.

Subparagraphs (a) (1) through (a) (5) relate to the employee, the type of training the employee received, when the training was given to the employee, the subjects covered, and the total hours of instruction the employee received. These requirements aid in the verification of compliance with Section 25.12 of these regulations.

Subparagraphs (a) (6) through (a) (8) relate to the training instructor. In the event there are questions regarding the training that was provided, whether it be course content, methodology, or other concerns, the identity of the training instructor is relevant and necessary to any record-keeping of this nature. The ability to contact the trainer would be essential in any audit of the program. Additionally, if the training instructor were working for the employer on the basis of a contract agreement, as opposed to an employer/employee relationship, the nature of that agreement would need to be audited as well. And if the instructor conducted mock driving tests during training, the results of those tests must be included in the records.

Subparagraphs (a) (9) through (a) (11) provide verification of compliance with Section 25.13 of these regulations. Subparagraph (a) (10) verifies compliance with the requirement of Section 25.19 that the employer to enter into a contract with its Examiner(s).

Subparagraph (a) (12) requires all score sheets, both pass and fail, for each employee issued a Certificate of Driving Skill to be kept on file. This is necessary in order to monitor the patterns, if any, of the Examiner's scoring.

Subparagraph (a) (13) requires the employer to retain a copy of every Certificate of Driving Skill (DL170ETP, Rev. 9/02) issued. In addition, the department will be sending a list of employees certified in the prior enrollment period to the employer. It is essential that the employer maintain a copy of the certificates in its records to validate the driver received the class of license requested on the certificate. The employer will be required to verify the names on the list that is sent to the department.

Subparagraph (a) (14) requires the employer to maintain the documentation of approval by the department of all primary and alternate Driving Test Routes.

Subparagraph (b) requires the employer to retain documentation of training, driving test score sheets, employment records and other Employer Testing Program related records for the three most recent years and for three years thereafter. This is necessary for purpose of audits, which may not be conducted on an annual basis.

Subparagraph (c) requires the employer to make available all Employer Testing Program related records pertaining to driver training, testing and employment for monitoring by the department at the record-keeping location identified on the employer's most recent Application. Vehicle Code section 15250 (c) (2) (A) provides that third party testers must agree to authorize the Federal Motor Carrier Safety Administration, its representatives, and the department, or its representatives to conduct random examinations, inspections, and audits without prior notice. Subparagraph (B) of Section 15250 (c)(2) includes permission for the department, or its representative, to conduct onsite inspections at least annually.

Subparagraph (d) and subparagraphs (d) (1) and (2) require the employer to provide records to verify the employment of individuals whose roles are identified in these regulations, at the time of their activity in the Employer Testing Program. Sections 25.20 and 25.21 of these regulations outline the roles and responsibilities of the Administrator and the Authorized Representatives, and require the designated individual to be an employee of the employer. Additionally, the employer is

only authorized to issue a Certificate of Driving Skill (DL170ETP, Rev 9/02) to its employee. Subparagraph (d) (2) requests verification of employment of the employer's drivers.

Subparagraph (d) (3) of this section requires verifiable documentation that the written contract requirement has been met. Both subparagraph (f) (2) of Section 25.19 and subparagraph (a) (11) of Section 25.22 require that a contract exist between the employer and the Examiner.

§25.16 Sample Testing of Certified Drivers

Subparagraph (a) notifies the employer that the department will re-examine a sample of its drivers that have been certified. Title 49, Part 383, Section 383.75 (a) (iv) requires that at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test applicant, or that States test a sample of drivers who were examined by a third party to compare pass/fail results. The department has elected to test a sample of drivers who were examined by a third party.

Subparagraph (b) allows the department to determine the selection of drivers. This is to prevent the employer from preselecting the best drivers for the re-examination.

Subparagraph (c) requires the employer to notify each certified driver of the possibility of being required to pass a department administered test, at the department's discretion, so that the employees are not surprised by the requirement to re-test at the department.

Subparagraph (d) requires the department to provide written notice to the employer and the driver of the selection for a re-test.

Subparagraph (e) holds the employer responsible for ensuring that the driver is available for a re-test at the department since the driver is an employee of the employer. This re-test must be scheduled within 30 days of the department's notice. The employer would be required to submit a copy of the driver's test score sheets to the department, also within 30 days of the notice. In the event the employer no longer employs the driver, it shall be the employer's responsibility to notify the department within 10 days after receipt of the department's notice.

Subparagraph (f) authorizes the department to void the Certificate of Driving Skill (DL170ETP, Rev. 9/02) and downgrade the driver's license to the previous class that the driver possessed, if the driver does not return to the department for the department-administered test.

Subparagraph (g) authorizes the department to conduct an investigation of any driver who fails the department-administered test and may require a re-examination of the driver to retain the class of license issued through the Certificate of Driving Skill (DL170ETP, Rev. 9/02).

Subparagraph (h) specifies that the department will downgrade the license to the previous class that the driver possessed before certification if the driver fails both department-administered re-examinations.

§25.17 Cancellations/Reinstatements

Subparagraph (a) permits an employer with an active Employer Number to voluntarily cancel their Employer Number using a pre-printed Voluntary Cancellation Request form (DL520CETP, Rev. 5/97), or by sending a written request to the department on the employer's letterhead.

Subparagraphs (a) (1) through (a) (8) identify the information that must be included on a written request for voluntary cancellation of an Employer Number. These are standard identification

elements that allow the department to quickly identify the correct record to be cancelled. Also included in this information would be the date the employer would like to have the cancellation become effective.

Subparagraph (b) provides a remedy for an employer who has voluntarily cancelled its Employer Number and wishes to reactivate. If the prior term of the Employer Number has not expired the employer may submit a Request for Reactivation (DL817ETP, Rev. 7/02). However, if the Employer Number were due to expire within 60 days, the employer would be required to submit a renewal Application (DL520ETP, Rev. 8/02) along with supporting documentation.

Subparagraph (c) authorizes the department to cancel an Employer Number if the Number was issued in error. The department would be required to give the employer 15 days prior written notice of such cancellation. Because this cancellation would be without prejudice, the employer would be able to apply for, or correct the previous application for, a new Employer Number.

§25.18 Sanctions/Reinstatements

Title 49, Part 383, (a) (2) (v) authorizes the State to take prompt and appropriate remedial action against third party testers in the event the third party tester fails to comply with State or Federal standards for the commercial driver license program, or with any other provisions in Title 13, California Code of Regulations, Article 2.1, Sections 25.06 through 25.22. Vehicle Code Section 15250 (c) (2) (D) permits the department to cancel, suspend, or revoke the agreement with a third party tester if the third party tester fails to comply with the standards for the commercial driver's license testing program or with any other term of the third party agreement. Vehicle Code Sections 15250 (c) (2) (F) and (G) specify the terms of suspensions and revocations.

Subparagraph (a) and subparagraphs (a) (1) through (a) (4) provide the reasons the department will suspend or revoke an Employer's Number. These reasons include failure to comply with appropriate State and/or Federal standards and regulations. The appropriate code references have been included in the regulations. Subparagraphs (a) (3) and (a) (4) reference a serious offense that affects public safety, and fraud or criminal activity related to the Employer Testing Program.

Subparagraph (b) requires the department to provide the employer with 15-days written notice prior to imposing a suspension/revocation of the Employer Number. However, the department may immediately suspend or revoke an employer number in the event an employer is engaging inappropriate practices in such a manner that immediate suspension or revocation is required for the safety of persons on the highway. The department proposes to incorporate by reference a document entitled "Guidelines for Employer Testing Program Sanctions" (Rev. 9/30/02), to assist in the Director or his or her designee in the decision making process, and to use any and all other sanctions provided by relevant statutes and regulations. Deviation from the referenced guidelines is appropriate in circumstances where there exist mitigating factors, an extensive length of time has passed since the violation occurred, or there are problems with or lack of evidence.

In accordance with above described guidelines, the department has established a graduated scale for sanctions based on the seriousness of the offense in subparagraphs (b) (1) through (b) (4).

Subparagraph (c) provides that during a period of suspension, the employer would be prohibited from conducting training, testing, and/or driver certification until correction of deficiencies that caused the suspension has been verified by the department and the suspension has ended.

Subparagraph (d) provides instruction concerning the appeal or review process that is available to the employer in accordance with Vehicle Code section 15250 (b) (2) (D).

Subparagraph (e) provides for reinstatement after a suspension. This includes submission of a Request for Reinstatement (DL813ETP, Rev. 11/01). The department would still have the right to verify that the employer has taken corrective measures to eliminate the deficiencies prior to reinstatement.

Subparagraph (f) provides for reinstatement after a revocation. The employer would be required to submit an original Application (DL520ETP, Rev. 8/02) with all of the documentation identified in Section 25.08 of these regulations, and submit proof of correction of the deficiencies that caused the revocation.

Subparagraph (g) authorizes the department to discontinue the Examiner's eligibility to conduct driving tests, by providing a 15-day written notice to the employer and the examiner before the sanction becomes active. Sanctions are authorized against the third party tester for failing to comply with state or federal standards for testing. Vehicle Code section 15250 (c) (2) (C) requires Examiners to meet the same qualifications and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the Code of Federal Regulations. In the event an Examiner is not conducting driving tests pursuant to the appropriate requirements; has certain actions taken against their driver license; or is not available to participate in monitoring the Employer Testing Program activities; the department shall discontinue the Examiner's eligibility to conduct driving tests.

Subparagraph (h) provides for reinstatement of the Examiner's eligibility to conduct driving tests. The Examiner must submit a Request for Reinstatement – Examiner (DL810ETP, NEW 1/02) and a \$55 training fee to attend training. A new Certificate of Training will be issued upon successful class completion. For the purposes of reinstatement, the requirements of Section 25.22 of these regulations must be met, including the three-year license requirement, as well as having no actions against the Commercial Driver License, and completion of a department sponsored training course, prior to reinstatement of examination authority.

(A) §25.19 Employer Roles and Responsibilities

Subparagraph (a) requires the employer to designate an Administrator, one or more Authorized Representative(s) and one or more Examiner(s). The employer is responsible for ensuring the proper separation of duties identified in subparagraphs (a) (1) through (a) (3).

Subparagraph (b) states the employer's responsibility to provide all drivers with commercial driver training as stated in Section 25.12 of these regulations. This is a reiteration for the purpose of consolidating all of the employer's roles and responsibilities in one location. This is necessary to provide ease of reference of all requirements for employers.

Subparagraph (c) requires the employer to enroll its drivers in the department's Employer Pull Notice Program. This program automatically provides the employer with periodic driving record information on all drivers registered in the program. Although this requirement in Vehicle Code 1808.1 is mandatory for most employers of commercial drivers, it does not apply to employers of non-commercial Class A and B drivers, such as volunteer fire departments. Since enrollment in the Pull Notice program is free for governmental employers and it is in the best interest of the employer to enroll its drivers, the department is requiring all participants in the Employer Testing Program to enroll their drivers in the Pull Notice Program.

Subparagraph (d) requires the employer to enroll each Examiner under its Employer Pull Notice Number during the employer and Examiner's Contract period. Based on the equivalency requirements of Vehicle Code Section 15250, the requirement to enroll Examiners in the

Employer Pull Notice Program is equal to the department's policy of enrolling its examiners in the same program.

Subparagraph (e) require the employer to immediately discontinue the Examiner from conducting tests for certification purposes upon receipt of notification that an action has been taken against an Examiner's commercial driver license that would disqualify the Examiner from conducting tests. Subparagraph (e) also requires the employer to notify the department within 10 days of receipt of the Employer Pull Notice printout.

Subparagraphs (f), (f) (1) and (f) (2) require the employer, prior to allowing an Examiner to conduct a commercial driving test, to ensure the Examiner meets the qualifications that are identified in Section 25.22 of this regulation, and enter into a written contract with the Examiner.

Subparagraphs (g) and (g)(1) through (g)(13) identify the elements that must be included in the Examiner's Contract with the employer.

Subparagraphs (g) (1) through (g) (7) are included in Section 25.22 of these regulations and will be discussed in the statement of reasons for that section. They are listed here for inclusion in the Examiner's Contract to ensure that the employer understands its responsibility to monitor activities performed by the Examiner.

Subparagraph (g) (8) would require the Examiner to provide the employer with the original score sheets used during the Driving Test of drivers. This subparagraph corresponds with the requirements of Section 25.15 (a) (12) that requires the employer to keep all pass/fail score sheets (DL65ETP, Rev. 8/02) used for each employee issued a Certificate of Driving Skill (DL170ETP, Rev. 9/02).

Subparagraph (g) (10) requires the employer to include in the Examiner Contract a provision that tests cannot be conducted while the examiner's driver license is not valid or the department has taken a probationary action against the Examiner. Because a portion of the Examiner's qualification to conduct Driving Tests is linked to the California Commercial Driver License, it is imperative that the Examiner maintains a valid license without actions being taken against his/her driving privilege.

Subparagraphs (g) (11) and (g) (12) prohibit the Examiner from conducting driving Tests or signing Certificates of Driving Skill (DL170ETP, Rev. 9/02) for his/her own relative, supervisor, or for himself/herself. This is necessary to avoid even the appearance of impropriety, and the employer must include provisions in the Examiner Contract that clearly state what would be considered a conflict of interest for the Examiner.

Subparagraph (g) (13) identifies what would clearly be considered a fraudulent act. The Examiner would be informed in the Examiner Contract that they must not knowingly sign a false or incorrect Certificate of Driving Skill (DL170ETP, Rev. 9/02).

Subparagraph (h) holds the employer responsible for specified assurances regarding the driver. The employer is ultimately responsible for ensuring adherence to the various requirements stated in these regulations.

Subparagraph (h) (1) through (h) (5) reiterate requirements that have been addressed elsewhere in this Statement of Reasons. It is necessary to repeat these requirements for ease of reference for the employer.

§25.20 Administrator Roles and Responsibilities

Subparagraph (a) requires the Administrator to be an employee of the employer, and to have sufficient knowledge of the provisions of these regulations to be able to oversee the program and serve as the employer's liaison with the department. Each employer is required to identify an Administrator. The Administrator will be the department's point of contact for all actions.

Subparagraph (b) requires the Administrator to sign all applications and official documents on behalf of the employer.

Subparagraph (c) requires the Administrator to ensure that the employer honors provisions of these regulations.

Subparagraph (d) requires the Administrator, in an oversight capacity, to ensure the Authorized Representative(s), the Examiners and drivers honor the provisions of these regulations in the process of fulfilling their roles and responsibilities related to the Employer Testing Program.

Subparagraph (e) requires the Administrator to ensure that the Driving Test used for certification purposes meets the department's Commercial Driver License Driving Performance Evaluation standards.

Subparagraph (f) requires the Administrator to ensure that the employer continues to qualify for an Employer Number.

Subparagraph (g) places on the Administrator the responsibility for ensuring that deficiencies identified during an audit or inspection are corrected and validated by the department, prior to resuming training, testing and driver certification.

Subparagraph (h) requires the Administrator to make all required documentation available for inspection and verification by the Federal Motor Carrier Safety Administration or the department, as the employer's liaison with the department.

Subparagraph (i) places on the Administrator, in an oversight capacity, the responsibility to ensure that the employer does not issue any Certificates of Driving Skill (DL170ETP, Rev. 9/02) when the employer no longer qualifies for participation in the program.

Subparagraph (j) requires the Administrator to ensure that the Examiner has met all requirements and qualifications to conduct the Driving Tests for certification purposes.

Subparagraph (k) places on the Administrator the responsibility to ensure that the Examiner does not conduct a driving test when the Examiner is no longer authorized to do so.

§25.21 Authorized Representative Roles and Responsibilities

Subparagraph (a) requires the Authorized Representative to be an employee of the employer. This would provide an inherent responsibility to ensure the employer's interests are upheld on each driver certification. The employer would be required to appoint Authorized Representatives prior to submission of the Application (DL520ETP, Rev. 8/02) to the department. Authorized Representatives will certify, on behalf of the employer, that the driver has met all requirements and qualifications to be issued the Certificate of Driving Skill (DL170ETP, Rev. 9/02).

Subparagraph (b) requires the Authorized Representative to ensure that the Certificate of Driving Skill (DL170ETP, Rev. 9/02) is accurate and complete prior to signing it. The Authorized Representative's signature informs the department that the Examiner has conducted a driving test to the driver that meets all requirements of this regulation, the Vehicle Code, and the Code of Federal Regulations.

Subparagraph (c) requires the Authorized Representative, prior to signing the Certificate of Driving Skill (DL170ETP, Rev. 9/02), to verify that the Examiner has a valid contract with the employer at the time of testing, that the Examiner has a valid commercial driver license of the appropriate class and any required endorsements at the time of the test.

Subparagraph (d) requires the Authorized Representative to verify that the training received by the driver is in compliance with these regulations, and that the driver was employed by the employer at the time of the training.

Subparagraph (e) requires the Authorized Representative to verify that the driver being tested was employed by the employer at the time of the testing.

Subparagraph (f) requires the Authorized Representative to verify that the driver being certified by a Certificate of Driving Skill (DL170ETP, Rev. 9/02) was employed by the employer at the time of the certification.

Subparagraph (g) requires the Authorized Representative to ensure that the required driving test is given to a certified driver on a department-approved route.

Subparagraph (h) prohibits the Authorized Representative from acting or signing as the Examiner on the same Certificate of Driving Skill (DL170ETP, Rev. 9/02) on which they are signing as the Authorized Representative, in order to avoid even the appearance of impropriety.

Subparagraph (i) prohibits the Authorized Representative from signing the Certificate of Driving Skill (DL170ETP, Rev. 9/02) for his/her own relative, supervisor or for himself or herself.

§25.22 Examiner Roles and Responsibilities

Each Examiner plays a pivotal role in the Employer Testing Program. The Examiners have the responsibility to certify that the driver meets the qualifications necessary to operate a commercial vehicle on the public highways of the state of California. Additionally, Vehicle Code Section 15250 (c) (2) (C) requires that all third-party testers meet the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving skill tests in compliance with the requirements of Part 383 of Title 49 of the Code of Federal Regulations.

Subparagraph (a) indicates that upon adoption of these regulations, all Examiners will be held to the same or equivalent standards that employees of the department are expected to maintain.

Subparagraphs (a) (1) through (6) require the Examiner to complete various steps prior to conducting a commercial Driving Test.

Subparagraph (a) (1) requires a new and reinstated Examiner to submit an Application for Examiner (DL811ETP, Rev. 9/02) to the department. This application must be accepted and the Examiner must receive notification of approval by the department prior to conducting any driving tests.

Subdivision (a) (2) requires a new and reinstated Examiner to have held a commercial driver license for at least 3 consecutive years, with the appropriate certificates and endorsements, for the type of license for which the Examiner is requesting testing authority. The department's Driver Performance Evaluators are provided with extensive in-house training and experience. They must attend a 10-day training class to understand the driver licensing process, prior to attending in-house examiner training which is an additional 15 days. These examiners are then required to conduct a minimum of 150 evaluations prior to attending Commercial Driver License Examiner Training. It is the department's position that at least 3 years of driving experience will provide the

third-party examiner with equivalent qualifying experience as the department's training and experience working in the department's field offices conducting exams.

Subparagraph (a)(3) requires an Examiner to hold a commercial driver license of the class and the required endorsements for which they will be conducting examinations because it would be impractical to require third party examiners to conduct driver evaluations in DMV field offices. This requirement will provide the third-party examiner with the equivalent qualifying experience as the department's training and experience working in the department's field offices conducting exams.

Subparagraph (a) (4) requires an Examiner to have no actions against his or her commercial driver license that would disqualify him or her to act as an Examiner, including suspension, revocation or cancellation of the license, or probationary actions due to negligent operation of a commercial vehicle. An Examiner must be an experienced, knowledgeable, and professional driver to conduct the driving tests. A driver whose license has been suspended, revoked or cancelled would not be demonstrating the level of professionalism necessary to conduct driving tests in an environment that would place them as the final authority. This is also true of Examiners who are on probation for negligent operation of a commercial vehicle.

Subparagraph (a) (5) requires the payment of a \$55 Examiner training fee. This fee would cover the costs of conducting the Examiner training.

Subparagraph (a) (6) requires the Examiner to attend and pass a department-sponsored training class to establish eligibility to act as an Examiner, and receive a valid certificate of training.

Subparagraph (a) (6) (A) provides that the \$55 fee for the training is non-refundable if the Examiner does not pass the training course. The cost to the department for conducting the course does not change even if the Examiner does not pass the course.

Subparagraph (a) (6) (B) requires the Examiner to pay the \$55 training fee again if the Examiner does not pass the initial training course and applies to attend the training again. The cost to conduct the course does not change even if the Examiner must attend the training again.

Subparagraph (a) (6) (C) requires the Examiner to complete the requirements of this section within one year from submission of the Application for Examiner (DL811ETP, Rev. 9/02). If not, a new Application for Examiner (DL811ETP, Rev. 9/02) would need to be completed along with submission of a new training fee would be required. This is necessary because the department may purge incomplete information from its database after 12 months.

Subparagraph (a) (7) requires that the Examiner be under written contract with the employer at the time a Driving Test is conducted. This is necessary to ensure each Examiner is accountable to the employer for abiding by these regulations, as well as the requirements of the California Vehicle Code and the Code of Federal Regulations.

Subparagraph (b) provides that additional testing authority must be requested in writing and approved by the department before the Examiner conducts testing of the additional levels.

Subparagraph (c) requires the Examiner to ensure that the driver has an instruction permit appropriate for the test vehicle prior to conducting a Driving Test. This requirement is the same as those for department Driver Performance Evaluators.

Subparagraph (d) requires the Examiner to conduct the Driving Tests in accordance with applicable California Vehicle Code Sections and the Code of Federal Regulations. The

Commercial Driver License Performance Evaluation criteria identified in Section 25.13 of these regulations are the criteria established by the department that encompass the requirements of applicable laws and therefore must be used by the Examiner when conducting a Driving Test.

Subparagraph (e) requires the Examiner to ensure that all phases of the Driving Test (pre-trip inspection, skills and road tests) are completed successfully and the driver passes the commercial Driving Test.

Subparagraph (f) requires the Examiner to ensure that the appropriate type of commercial vehicle is used for the driving test for which the Certificate of Driving Skill (DL170ETP, Rev. 9/02) would be issued.

Subparagraph (g) prohibits the Examiner from acting as the Authorized Representative for the same Driving Test that he/she conducted, in order to preclude even the appearance of impropriety.

Subparagraph (h) requires the Examiner to complete and sign the Certificate of Driving Skill (DL170ETP, Rev. 9/02) in the appropriate area as the Examiner.

Subparagraph (i) permits the Examiner to work for more than one employer concurrently, as long as the Examiner is under a written contract with each employer. The department is not requiring the Examiner to be an employee of the employer, but must be under written contract at the time of the driving tests.

Subparagraph (j) requires the Examiner to allow each employer to enroll him/her in the Employer Pull Notice Program during the contract period. This is necessary because the employer is required to know whether there are any actions being taken against the Examiner's license, that would preclude him/her from acting as an examiner.

Subparagraph (k) requires the Examiner to ensure that his/her Medical Examination Report (DL51, Rev. 6/02) or Non-Commercial Driver License Health Questionnaire (DL546, Rev. 4/2000) is on file with the department. The Medical Examination Report (DL51, Rev. 6/02) is contained in the Guidelines for Actions Against the Commercial Driving Privilege (Rev. 2/99), which is incorporated by reference in subparagraph (b) of Section 110.04 of Title 13, California Code of Regulations. The requirements for the Non-Commercial Driver License Health Questionnaire (DL546, Rev. 4/2000) for restricted fire fighter driver licenses are contained in Sections 28.22 and 28.23 of Title 13, California Code of Regulations. Commercial drivers are required to submit a report of medical examination to the department to maintain compliance with appropriate Vehicle Code and Code of Federal Regulation sections.

Subparagraph (l) provides that upon the department's request, the Examiner must be available between the hours of 8:00 a.m. to 5:00 p.m., with notice, to participate during the monitoring of the employer's third party testing program for the duration of the Examiner's Contract and for one year after termination of the contract. In the event of an audit or inspection, the department must be able to verify information and methods of testing, as well as driving test routes, with the Examiner.

Subparagraph (m) requires the Examiner to update his/her testing skills as needed in response to statutory and program changes. This is necessary so that the Examiner is giving the appropriate Driving Tests that comply with applicable laws. The department shall notify Examiners of statutory and program changes, and may require additional department-sponsored training to maintain eligibility.